

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #12	CCRB Case #: 201806306	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/02/2018 1:34 PM	Location of Incident: East 117th Street and 1st Avenue	Precinct: 25	18 Mo. SOL 2/2/2020	EO SOL 2/2/2020	
Date/Time CV Reported Thu, 08/02/2018 3:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 08/02/2018 3:22 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jonathan Hom	4803	940269	023 PCT
2. POM Michael Laborde	05867	954037	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Laborde	Abuse: Police Officer Michael Laborde stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Jonathan Hom	Abuse: Sergeant Jonathan Hom stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Michael Laborde	Abuse: Police Officer Michael Laborde questioned § 87(2)(b)	

Case Summary

On August 2, 2018, § 87(2)(b) filed this complaint with the CCRB via email. On October 16, 2018, this case was closed by the Board with the disposition “complainant uncooperative.” On February 26, 2019, this case was re-opened in response to a request by § 87(2)(b).

On August 2, 2018, at approximately 1:34 p.m., in the vicinity of East 117th Street and 1st Avenue in Manhattan, Sergeant Jonathan Hom and Police Officer Michael Laborde of the 25th Precinct stopped § 87(2)(b)'s vehicle (**Allegation A and Allegation B: Abuse of Authority, § 87(2)(g)**). PO Laborde questioned § 87(2)(b) (**Allegation C: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was released without being arrested or issued a summons.

This case contains body-worn camera footage. This footage may be reviewed at Board Review 04 and Board Review 05, while a summary of this footage may be reviewed at Board Review 06.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Laborde stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Sergeant Jonathan Hom stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b)'s vehicle was stopped by Sgt. Hom and PO Laborde. It is undisputed that PO Laborde informed § 87(2)(b) that he was being pulled over for having excessively tinted windows. It is undisputed that § 87(2)(b)'s vehicle has tints on its rear side windows and rear windshield. § 87(2)(b) was not issued a summons for this infraction.

In his initial complaint, filed on August 2, 2018, § 87(2)(b) stated that at approximately 1:34 p.m. on the same date, he was driving north on First Avenue in Manhattan when he was pulled over at East 117th Street and 1st Avenue by an unmarked vehicle (Board Review 01). PO Laborde approached § 87(2)(b)'s driver side window and instructed him to roll his windows down. § 87(2)(b) asked why he had been pulled over, and was informed by PO Laborde that he had been pulled over due to having illegally tinted windows.

In his sworn statement provided on November 9, 2018, § 87(2)(b) stated that he was unable to clearly recall this incident due to the frequency with which he is pulled over by officers; however, the testimony he did provide was generally consistent with his initial complaint (Board Review 02). § 87(2)(b) has filed 10 CCRB complaints regarding vehicle stops since 2017. § 87(2)(b) affirmed that his vehicle had tinted rear side windows and a tinted rear windshield on the date of his CCRB interview.

During his CCRB interview on March 19, 2019, PO Laborde voiced having little recollection of this incident (Board Review 03). Upon being presented with the body-worn camera footage he filmed during the incident, however, PO Laborde affirmed that § 87(2)(b) was pulled over for having excessively tinted windows.

At the 00:55 minute mark in PO Laborde's BWC, PO Laborde can be heard stating, “For your tints,” in response to § 87(2)(b) asking him why he was being pulled over (Board Review 04).

At the outset of this footage, it can be observed that § 87(2)(b)'s rear side windows and rear windshield have what appear to be dark, almost opaque tints.

A photograph of § 87(2)(b)'s vehicle, taken by the undersigned investigator on June 13, 2018 following § 87(2)(b)'s verified interview for CCRB § 87(2)(b), confirms that § 87(2)(b)'s rear windows are in fact extremely dark (Board Review 07).

New York State Vehicle and Traffic Law Section 365, 12-a(b)(3) prohibits individuals from driving vehicles with rear side windows that permit light transmittance of less than 70% if that vehicle is classified as a station wagon, sedan, hardtop, coupe, hatchback or convertible (BR 08).

A YouTube video, provided by the New York State Department of Motor Vehicles, which at the 0:47 minute mark contains a depiction of legally tinted windows that permit transmittance of 78%, may be reviewed at the following link:

<https://www.youtube.com/watch?v=gIEd4sHHQ0g&spfreload=10>.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (C) Abuse of Authority: Police Officer Michael Laborde questioned § 87(2)(b)

It is undisputed that PO Laborde asked § 87(2)(b) if he had illegal contraband in his vehicle, and that no contraband was recovered during the incident.

At the 04:06 minute mark in PO Laborde's BWC footage, PO Laborde can be heard asking § 87(2)(b) "There ain't nothin in the car that ain't supposed to be there, right? No, I'm asking you, is there anything in the car that's not supposed to be in there? No, absolutely not? 100%? Alright" (Board Review 04).

During his CCRB interview, PO Laborde stated that in asking this question, he was referring generally to "any weapons, any contraband, anything that's not supposed to be there" (Board Review 03). PO Laborde stated that this is a question he asks during every car stop, that he did not think § 87(2)(b) was ever suspected of being engaged in criminality aside from having excessively tinted windows, and that he had no specific indications that § 87(2)(b) was in possession of contraband during the incident. PO Laborde stated that he asked this question solely because he asks it during every vehicle stop, and because the potentiality that a stopped motorist may have a weapon presents a concern for officer safety.

In People v. Garcia, 2012 NY Slip Op 8670, 20 N.Y.3d 317, 959 N.Y.S.2d 464, 983 N.E.2d 259, the Court of Appeals of New York held that a police officer may not ask a stopped motorist "pointed questions... that would lead the person approached reasonably to believe that he or she is suspected of some wrongdoing" absent a "founded suspicion that criminal activity is afoot" (Board Review 09). Specifically in this case, which dealt with a vehicle which was stopped due to

§ 87(2)(g)

- This is one of 10 CCRB complaints to which § 87(2)(b) has been a party (Board Review 10). § 87(2)(b)

[REDACTED]

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
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 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

Sgt. Hom has been a member of service for 13 years. In that time, he has been the subject of 22 allegations in 11 prior cases, none of which were substantiated § 87(2)(g)

PO Laborde has been a member of service for six years. In that time, he has been the subject of 31 allegations in 9 prior cases, none of which were substantiated § 87(2)(g)

- § 87(2)(b) rejected mediation (Board Review 02).

- According to a FOIL request filed with the NYC Comptroller's Office, as of March 21, 2019, § 87(2)(b) has not filed a Notice of Claim regarding this incident (Board Review 11).
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date